

Phillip Wm. Lear  
Lear & Lear PLLC  
808 E South Temple Street  
Salt Lake City, UT 84102  
Telephone: (801) 538-5000  
Facsimile:(801) 538-5001  
Email: [phillip.lear@learlaw.com](mailto:phillip.lear@learlaw.com)  
Attorney for Linda P. Smith

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

LINDA P. SMITH,

*Plaintiff*

Case No. 1:21-cv-00047-HCN-DBP

v.

XAVIER BECERRA, in his capacity  
as the Secretary of the United States  
Department of Health and Human  
Services,

*Defendant*

LINDA SMITH'S UNOPPOSED  
MOTION TO STAY ATTORNEY  
FEE BRIEFING

JURY TRIAL DEMANDED

Judge Howard Nielson, Jr.  
Magistrate Judge Dustin B. Pead

Plaintiff Linda Smith files this unopposed motion to stay attorney fee briefing in this case. Good cause exists to stay briefing because doing so will avoid wasting judicial and party resources in addressing fees through as many as three rounds. Mrs. Smith requests that fee briefing be stayed until 30 days after the Tenth Circuit issues its mandate in the ongoing appeal.

### **BACKGROUND**

This case was filed in April 2021. *See* Dkt. #1. After summary judgment briefing completed, on January 19, 2022, this Court denied the motions for summary judgment as moot, directed payment of the claims in suit without ruling on the causes of action or granting Mrs. Smith the full relief she sought, and entered judgment in Mrs. Smith's favor. *See* Dkt. #52, 53. Thereafter, Mrs. Smith moved to alter or amend the judgment seeking a ruling on the causes of action and the full relief sought by the Complaint (principally a judgment that CMS 1682-R issued illegally and an injunction barring its enforcement going forward). *See* Dkt. #54. On February 8, 2022, this Court denied Mrs. Smith's request. *See* Dkt. #55.

On February 22, 2022, Mrs. Smith filed a notice of appeal (see Dkt. #56) and, subsequently, the Tenth Circuit granted Mrs. Smith's request to expedite the appeal. Mrs. Smith's opening brief at the Tenth Circuit is due on March 14, 2022.

## **DISCUSSION**

Pursuant to 28 U.S.C. § 2412, at the earliest, a motion seeking attorney fees by Mrs. Smith would be due on March 10, 2022 (*i.e.*, 30 days after the Court denied Mrs. Smith's FED.R.CIV.P. 59 motion). However, if Mrs. Smith files her motion then and is victorious on her appeal, the parties and the courts face three rounds of attorney's fees briefs. The first would be in front of this Court now, the second before the Tenth Circuit, and a third before this Court on remand. Moreover, given the prospect of additional causes of action decided, and relief granted, in Mrs. Smith's favor, the factual basis under which fees would be evaluated (*e.g.*, the degree of success) would be ever shifting. By contrast, if fee briefing is stayed, this Court will only have to address fees a single time using established facts.

No prejudice to the Secretary or this Court will be occasioned by granting a stay, which will promote judicial economy, and the Secretary does not oppose this motion. Accordingly, a stay of attorney's fees briefing should be entered until 30 days after the Tenth Circuit issues its mandate in the ongoing appeal.

## **CONCLUSION**

For the reasons set forth above, Mrs. Smith's motion should be granted.

Dated: March 10, 2022

Respectfully submitted,

PARRISH LAW OFFICES

/s/ James C. Pistorino

James C. Pistorino

*Attorneys for Plaintiffs*

LEAR & LEAR PLLC

/s/ Phillip Wm. Lear

Phillip Wm. Lear

*Attorneys for Plaintiff*